

CERTIFIED MAIL®



7019 1640 0001 3574 3861



1000



98101

U.S. POSTAGE PAID
FCM LG ENV
SEATTLE, WA
98115
JUN 16, 20
AMOUNT

\$6.45

R2306Y152326-25

**SMITH &
LOWNEY**
PLLC

2317 E. John St.
Seattle, WA 98112
(206) 860-2883
www.smithandlowney.com

Chris Hladick, Regional Administrator
U.S. EPA, Region 10
1200 Sixth Ave, Suite 155
Seattle, WA 98101



SMITH & LOWNEY, P.L.L.C.

2317 EAST JOHN STREET
SEATTLE, WASHINGTON 98112
(206) 860-2883, FAX (206) 860-4187

June 16, 2020

Via Certified Mail - Return Receipt Requested

Managing Agent
Ash Grove Cement West
3801 East Marginal Way S.
Seattle, WA 98134

Managing Agent
Ash Grove Cement Company
11011 Cody St
Overland Park, KS 66210-1313

Re: NOTICE OF INTENT TO SUE UNDER THE CLEAN WATER ACT

Dear Managing Agent:

We represent Puget Soundkeeper Alliance ("Soundkeeper"), 130 Nickerson St. #107, Seattle, WA 98109, (206) 297-7002. Any response or correspondence related to this matter should be directed to us at the letterhead address. This letter provides Ash Grove Cement West ("Ash Grove") with 60 days' notice of Soundkeeper's intent to file a citizen suit against Ash Grove under Section 505 of the Clean Water Act ("CWA"), 33 U.S.C. § 1365, for the violations of effluent standards and limitations described below. These violations continue to occur at the Ash Grove facility, an approximately 18.5-acre cement production facility located at or about 3801 E Marginal Way S, Seattle, WA 98134 (the "facility"), which discharges pollutants from point sources including the facility's designated stormwater discharge point to the Duwamish River and into Puget Sound at Elliott Bay in Seattle.

Soundkeeper asserts violations of "effluent standards or limitations" under 33 U.S.C. § 1365(a)(1), (f)(1) (unpermitted discharge in violation of the 33 U.S.C. § 1311(a) prohibition), and (f)(7) (violation of a National Pollutant Discharge Elimination System ("NPDES") permit or conditions thereof). The Washington State Department of Ecology ("Ecology") granted Ash Grove an individual NPDES permit for discharges of stormwater from the facility, issued on April 30, 2010, effective June 1, 2010, modified on October 25, 2012 and set to expire on May 31, 2015, under NPDES Permit No. WA0032221 (the "2010 Permit"). Ecology granted subsequent coverage under an individual NPDES Permit, issued on August 17, 2016, effective October 1, 2016, modified on December 15, 2016 and set to expire on September 30, 2021 (the "2016 Permit") under the same permit number, WA0032221. All violations alleged herein are continuing or likely to re-occur.

I. Effluent Limit Violations

Condition S1.A of the Permits requires that stormwater discharges must not cause a visible change in turbidity, color, or cause visible oil sheen in the receiving water, and discharges shall not cause or contribute to a violation of surface water quality standards (Chapter 173-201A WAC) or sediment management standards (Chapter 173-204 WAC) of the state of Washington and 40 CFR 131. Condition S1.A and the table on page 5 of the 2016 Permit establishes the following effluent limits that are applicable to Ash Grove: TSS maximum daily concentration of 30 mg/L; total copper average monthly concentration of 12.8 µg/L; total copper maximum daily concentration of 21.7 µg/L; no visible sheen of oil & grease at any time; pH minimum of 6.0 standard units; and pH maximum of 9 standard units.

Ash Grove discharges stormwater that contains elevated levels of TSS and copper in excess of the corresponding numeric effluent limitation, as indicated in the table of effluent limitation violations below. Ash Grove also discharges stormwater at pH levels in violation of the corresponding numeric effluent limitation, as indicated in the table of effluent limitation violations below. Each and every one of these discharges is a separate violation of the 2016 Permit and occurred on dates within the identified time periods known to Ash Grove. These violations are continuing or likely to recur. Soundkeeper hereby provides notice of its intent to sue Ash Grove for all numeric effluent limit violations in the past five years, including those listed below.

1. Condition S1.A of the 2016 Permit establishes the effluent limitation for the maximum daily concentration of TSS as 30 mg/L. Ash Grove has violated this limitation:

Date of Violation	TSS (daily concentration) (mg/L):
11/2018	11
3/2019	11

2. Condition S1.A of the 2016 Permit establishes effluent limitation for average monthly concentration of total copper of 12.8 µg/L. Ash Grove has violated this limitation:

Date of Violation	Copper (avg monthly) (µg/L)
3/2019	13.4
6/2019	33.8
11/2019	29.2

3. Condition S1.A of the 2016 Permit establishes the effluent limitation for the maximum daily concentration of total copper of 21.7 µg/L. Ash Grove has violated this limitation:

Date of Violation	Copper (max daily) (µg/L)
6/2019	33.8
9/2019	21.6
11/2019	29.2

4. Condition S1.A of the 2016 Permit establishes the effluent limitation for pH minimum of 6.0 standard units and pH maximum of 9 standard units. Any excursions below 5.0 and above 10.0 at any time are considered violations of this permit. Ash Grove has violated this limitation:

Date of Violation	pH
11/2018	3.17/7.89

II. Stormwater Pollution Prevention Plan (SWPPP) Violations.

Ash Grove is in violation of the Permits' SWPPP provisions as follows:

1. Condition S10.A of the 2010 Permit and Condition S9.A of the 2016 Permit require Ash Grove to update, implement, and comply with a SWPPP as specified. The SWPPP must be consistent with the Stormwater Management Manual for Western Washington ("SWMMWW"), available at <https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Stormwater-permittee-guidance-resources/Stormwater-manuals>. Ash Grove has violated these requirements of the Permits each and every day during the last five years and continues to violate them because its SWPPP is not consistent with the Permits' requirements and/or with the SWMMWW, has not been fully implemented, and has not been updated as necessary.

2. Condition S10.A.5 of the 2010 Permit and Condition S9.A.5 of the 2016 Permit require the SWPPP to include an assessment and description of existing and potential pollutant sources and a description of the operation, source-control, sediment control, and if necessary, treatment BMPs as well as an implementation schedule. Ash Grove has violated these requirements of the Permits each and every day during the last five years and continues to violate them as it has failed to prepare and/or implement a SWPPP that adequately describes and/or includes the required elements.

3. Condition S.10.A.6 of the 2010 Permit and Condition S9.A.6 of the 2016 Permit requires Ash Grove to implement BMPs identified in the approved Engineering Report including, at a minimum: training for truck drivers on truck cleaning practices so materials are not tracked throughout the facility; maintenance of the truck wash facility; proper disposal of truck wash wastewater; use of dust abatement methods to control fugitive dust emission and use of additional BMPs such as high efficiency sweeping and capture, reuse of dust abatement water/stormwater in cement production; scheduling stormwater system preventative maintenance program during the year and especially with a high priority before the heavy rain season; holding the annual refresher training for the yard crew and operations at the time preventative maintenance inspections are conducted; and mechanically cleaning the storm drains catch basins

to maintain the drains in the system. Ash Grove has violated these requirements of the Permits each and every day during the last five years and continues to violate them because its SWPPP does not include required source control BMPs identified in the approved Engineering Report.

4. Condition S10.B of the 2010 Permit and Condition S9.B of the 2016 Permit require the SWPPP to include source control BMPs as necessary to achieve all known, available, and reasonable methods of prevention, control, and treatment (“AKART”) and compliance with the stormwater discharge limits in Condition S1 of the Permits. Ash Grove has violated these requirements of the Permits each and every day during the last five years and continues to violate them because it has failed to prepare and/or implement a SWPPP that includes AKART BMPs and/or BMPs necessary to comply with the stormwater discharge limits in Condition S1 of the Permits.

5. Condition S10.B.1 of the 2010 Permit and Condition S9.B.1 of the 2016 Permit require the SWPPP to include, at a minimum, source control BMPs for each of the following: fueling at dedicated stations; loading and unloading areas; washing or steam cleaning vehicles/equipment; dust control; stabilized entrances and parking areas; storage or transfer of solid raw materials, by-products, or finished products; and vehicle and equipment maintenance. These provisions of the Permits also require that coal stockpile and storage areas along the Duwamish River shall be void of gaps to prevent direct flow of stormwater discharges from these areas to the Duwamish River; the pathway of stormwater discharges from the coal pile is inspected and any stormwater discharge to the Duwamish is reported to Ecology; the coal pile area is swept daily; and the height of the coal pile is controlled. Ash Grove has violated these requirements of the Permits each and every day during the last five years and continues to violate them because its SWPPP does not include required source control BMPs identified by the Permits, required to achieve AKART, and/or required to comply with the stormwater discharge limits of Condition S1 of the Permits. These violations include but are not limited to Ash Grove’s failure to implement source control BMPs such as Ash Grove’s failure to prevent discharges of solid material and dust directly to the Duwamish River from its docks, wharfs, conveyors, and/or the mechanisms used to transfer materials to and from vessels; and failure to prevent stormwater discharges from the coal pile from reaching the Duwamish River.

6. Conditions S10.B.2 and S10.B.3 of the 2010 Permit and Conditions S9.B.2 and S9.B.3 of the 2016 Permit require the SWPPP to include runoff conveyance and treatment BMPs as necessary to achieve AKART and compliance with the stormwater discharge limits as well as to prevent sedimentation. These include but are not limited to: daily sweeping or sweeping as often as necessary to keep paved areas clean; constructing and maintaining sediment traps, berms, or other means to minimize fine material deposition to catch basins; protecting properties adjacent to the project from sedimentation related to the facility; and constructing and maintaining sediment traps, barriers, and other BMPs intended to trap sediment on-site. Ash Grove has violated these requirements of the Permits each and every day during the last five years and continues to violate them because its SWPPP does not include required runoff conveyance and treatment BMPs identified by the Permits as required to achieve AKART, comply with the stormwater discharge limits of Condition S1 of the Permits, and/or prevent sedimentation.

7. Condition S10.B.4 of the 2010 Permit and Condition S9.B.4 of the 2016 Permit require Ash Grove to conduct stormwater inspections each week. The inspections must be conducted by the personnel named in the SWPPP and must include observations for the presence of floating materials, suspended solids, oil and grease, discoloration, turbidity, odor, etc., in the conveyance systems including weirs and outfalls. Whenever feasible, the inspection must be conducted during a rainfall event adequate in intensity and duration to verify that: the description of potential pollutant sources required under the Permits is accurate and the controls to reduce pollutants in stormwater discharges associated with industrial activity identified in the SWPPP are implemented and adequate. Ash Grove has violated these requirements of the Permits every week of the last five years and continues to violate them because it does not conduct weekly inspections and/or does not conduct weekly inspections during rainfall events of adequate intensity.

8. Condition S10.B.5 of the 2010 Permit and Condition S9.B.5 of the 2016 Permit require Ash Grove to manage raw materials in a way that prevents stormwater contamination and is consistent with the SWMMWW. Ash Grove must: contain and cover pollution causing materials and chemicals such as fuels, oils, lubricants, solvents, degreasers, petroleum products and any others to prevent migration into the stormwater system; contain petroleum-contaminated soils (PCS) that fail to meet the most protective MTCA Method 'A' treatment levels [WAC 173-340-740(2)] so as to prevent leaching of pollutants to surface waters; cover, contain, and store cement in silos; cover and contain admixtures; cover and contain raw material piles such as coal, iron ore, limestone and other raw materials; and contain contaminated slag materials from blasting at shipyards so as to prevent leaching of pollutants to surface waters. Ash Grove has violated these conditions each and every day during the last five years and continues to violate them because Ash Grove does not manage raw materials in a way to prevent stormwater contamination, in a manner that is consistent with the SWMMWW, and/or in a manner consistent with the requirements of the Permits.

9. Condition S10.C of the 2010 and Condition S9.C of the 2016 Permit require Ash Grove to: inspect all on-site sediment control facilities (including catch basins) and BMPs once a week during the wet season (October 1 – April 30) and maintain a file containing a log of observations as part of the SWPPP. Ash Grove is in violation of these requirements because over the past five years it has not conducted the required weekly inspections during the wet season and has not maintained a file containing a log of observations as part of the SWPPP.

10. Condition S10.D of the 2010 Permit and Condition S9.D of the 2016 Permit require Ash Grove to prepare and retain each inspection report as part of the SWPPP and require that each report summarize: the scope of the inspection; personnel conducting the inspection; the date(s) of the inspection; major observations relating to the implementation of the SWPPP; and any actions taken as a result of the inspection. The report must be signed in accordance with Condition G1. Ash Grove is in violation of these requirements because during the last five years it has failed to conduct each of the requisite inspections, failed to prepare and retain each inspection report, failed to include the requisite information in each inspection report, and failed to make the requisite certifications of each report.

III. Monitoring and Reporting Violations.

Condition S3.A.8 of the 2016 Permit requires Ash Grove to submit monthly discharge monitoring reports (DMRs) by the 28th day of the following month and quarterly DMRs by the 28th of the month following the monitoring period. Ash Grove has violated these conditions by failing to submit a monthly DMR within the time prescribed for December 2017 and February 2019 and failing to submit a quarterly DMR within the time prescribed for the fourth quarter of 2017.

IV. Violations of the Recordkeeping Requirements.

i. Failure to Retain Records.

Condition S3.B of the 2010 Permit and Condition S3.C of the 2016 Permit require Ash Grove to retain records of all monitoring information for a minimum of three years. Upon information and belief, Ash Grove is in violation of these conditions because it has failed to retain all monitoring records for a minimum of three years.

ii. Failure to Record Information.

Condition S3.C of the 2010 Permit and Condition S3.D of the 2016 Permit requires Ash Grove to record and retain specified information for each stormwater sample taken, including the date, exact place, method, and time of sampling, the individual who performed the sampling, the dates the analyses were performed, the individual who performed the analyses, the analytical methods used, and the results of all analyses. Upon information and belief, Ash Grove is in violation of these conditions as it has not recorded each of these specified items for each sample taken during the last five years.

V. Direct Discharges.

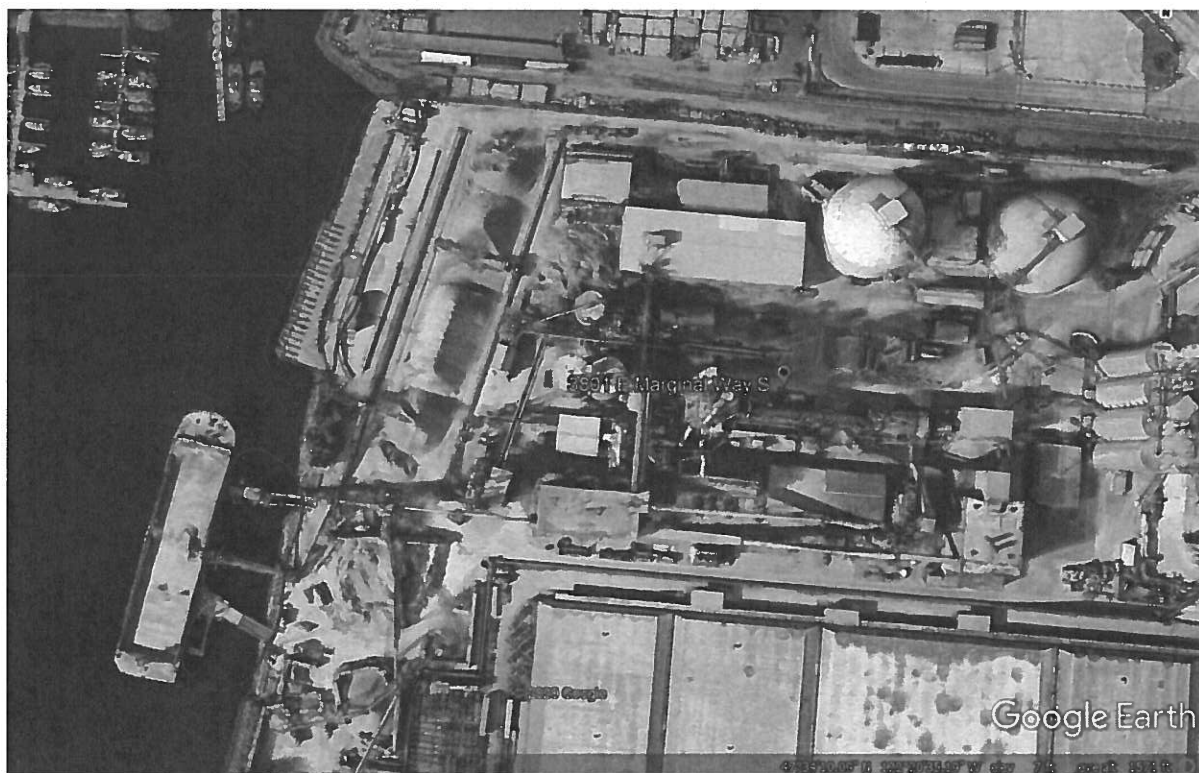
A. Illicit Discharges

Condition S3.E of the 2010 Permit requires Ash Grove to immediately take action to stop, contain, and cleanup any illicit discharges contributing to noncompliance and to institute additional source control actions and BMPs as necessary to control the noncompliance and correct the problem. Condition S3.F.1 of the 2016 Permit requires Ash Grove to immediately take action to stop, contain, and cleanup unauthorized discharges or otherwise stop the noncompliance and correct the problem. In addition, Condition S10.B.5 of the 2010 Permit and Condition S9.B.5 of the 2016 Permit require Ash Grove to manage raw materials to prevent stormwater contamination. Condition S6 of the 2010 Permit and Condition S5 of the 2016 Permit require Ash Grove to handle and dispose of all solid waste material in such a manner as to prevent its entry into state ground or surface water. And finally, Condition S9 of the 2010 Permit and Condition S8 of the 2016 Permit require the facility to submit and implement a spill control

plan to prevent materials used (including cement dust and chitosan acetate) and/or stored on-site from becoming pollutants or cause pollution upon reaching state's waters.

The 2010 Permit Fact Sheet notes that this facility has potential to cause sediment impacts from loading and unloading materials at the docks, as well as storage of raw materials near the banks. In Appendix D to the 2010 Permit Fact Sheet, Ecology confirms, "Ash Grove facility in Seattle does have runoff from the dock area that may potentially affect the sediment." The 2016 Permit Fact Sheet states, "The facility must not allow material to enter surface waters during dock loading/unloading." Ecology's Permit Fact Sheets for the 2010 and 2016 Permits state the "permit does not authorize discharge of the non-reported pollutants. The facility must notify Ecology if significant changes occur in any constituent [40 CFR 122.42(a)]. Until Ecology modifies the permit to reflect additional discharge of pollutants, a permitted facility could be violating its permit."

Ash Grove discharges materials from the overwater portions of the facility including the docks, conveyors and associated machinery, and wharf areas directly and via stormwater discharges to the Duwamish River in violation of these Permit conditions. The materials being discharged from these areas may include but are not limited to raw materials, dirt, dust, solid waste, petroleum coke, coal, smelter slag, vanillin black liquor solids, fly ash, crushed limestone, clay, sand, gravel, and iron ore. Ash Grove has directly discharged these pollutants to the Duwamish River in violation of their permit each and every time it has loaded or unloaded materials from a vessel or barge over the last five years (which dates are known to Ash Grove), and these discharges are reasonably likely to continue to occur. The over water portions of the facility from which these illicit discharges occur are circled in red in the following aerial image.



B. Unpermitted Discharges

The Permits authorize only the discharges of stormwater and specific pollutants contained in stormwater. Defendant does not possess and has never possessed an NPDES permit for its non-stormwater direct discharges of any other pollutant to the Duwamish River. The point sources of illicit discharges of pollutants at Ash Groves's facility include the equipment and mechanisms used to load and offload materials from barges and vessels; the conveyor belt used to load and offload materials from ships and transfer materials around the facility; as well as the docks, wharf, and facility itself. The materials being discharged from these areas include but are not limited to raw materials, dust, solid waste, petroleum coke, coal, smelter slag, vanillin black liquor solids, fly ash, crushed limestone, clay, sand, gravel, and iron ore.

Ash Grove discharges materials from the overwater portions of the facility including the docks, conveyors and associated machinery, and wharf areas directly to the Duwamish River in violation of the Clean Water Act. These point source discharges violate the Clean Water Act § 301(a), 33 U.S.C. § 1311(a), prohibition on pollutant discharges because they are not authorized by a NPDES permit. Ash Grove has generated discharges of materials to the Duwamish River each and every time it has loaded or unloaded materials from a vessel or barge over the last five years (which dates are known to Ash Grove), and these discharges are reasonably likely to continue to occur. The over water portions of the facility from which these discharges occur are encircled in red in the aerial image above.

C. Violations of Sediment Quality Standards

The portion of the Duwamish River directly adjacent to the facility's docks and wharf does not meet water quality standards (including sediment quality standards) for bioassay and is included on the state's "303(d) list" of impaired water bodies. Ash Grove's direct discharges of materials cause and/or contribute to violations of water quality standards (including sediment quality standards) for sediment bioassay, violations of aquatic life criteria, violations of the secondary contact recreational criteria, violations of the wildlife habitat criteria, violations of the harvesting criteria, violations of the commerce and navigation criteria, violations of the boating criteria, as well as violations of the aesthetic criteria due to the presence of turbid and toxic discharges from the facility that offend the senses of sight, smell and touch. *See* WAC 173-201A-210(1)(d), (1)(e), (1)(a)(iii), (3), (4), WAC 173-204-320(f), WAC 173-201A-240, WAC 173-201A-602, WAC 173-201A-610, WAC 173-201A-612, and WAC 173-204 Part III.

VI. CONCLUSION.

The violations described above are based on the information currently available to Soundkeeper. These violations are ongoing in that they continue or are likely to recur. Soundkeeper intends to sue for all violations, including those yet to be uncovered and those committed after the date of this Notice of Intent to Sue.

Under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), each of the above-described violations subjects the violator to a penalty of up to \$37,500 per day for each violation that occurred through November 2, 2015, and \$55,800 per day for each violation that occurred thereafter. In addition to civil penalties, Soundkeeper will seek injunctive relief to prevent further violations under Sections 505(a) and (d) of the CWA, 33 U.S.C. § 1365(a) and (d), and such other relief as is permitted by law. Also, Section 505(d) of the CWA, 33 U.S.C. § 1365(d), permits prevailing parties to recover costs, including attorney's fees.

Soundkeeper believes that this Notice of Intent to Sue sufficiently states grounds for filing suit. We intend, at the close of the 60-day notice period, or shortly thereafter, to file a citizen suit against Ash Grove under Section 505 of the CWA, 33 U.S.C. § 1365, for violations.

Sincerely,

Smith & Lowney, PLLC

By: 

Richard Smith
Alyssa Englebrecht
Meredith Crafton

cc: Andrew Wheeler, Administrator, U.S. EPA
Chris Hladick, Region 10 Administrator, U.S. EPA
Laura Watson, Director, Washington Department of Ecology
Registered Agent, Corporation Service Company, 300 Deschutes Way SW Ste 208 MC-CSC1, Tumwater, Wa, 98501, United States